Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1251

MICHAEL FRANK RENARD,

Petitioner,

— vs. —

THE STATE OF NEVADA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK R. DOYLE
323 Las Vegas Blvd. South
Las Vegas, Nevada 89101
Counsel for Petitioner

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vs.	)
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THE STATE OF NEVADA	)
	)
Respondent.	)

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

Petitioner, Michael Frank Renard, through his counsel, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Nevada in the case of Michael Frank Renard v. State of Nevada, Case No. 9831, 94 Nev., Advance Opinion No. 109, 580 P.2d 470 (1978).

OPINIONS BELOW

The trial court, the District Court of the Eighth Judicial District for Clark County Nevada, Dept. VII, convicted defendant and sentenced him to serve three years in the Nevada State Prison without opinion on May 31, 1977. The judgment is attached as Appendix B. Motion for reconsideration was denied without opinion by order on June 6, 1977, attached as Appendix C. The opinion of the Supreme Court of Nevada is reported at 94 Nev., Advance Opinion No. 105, 580 P.2d 470 (1978) and is attached as Appendix A.

A motion for rehearing to the Supreme Court of Nevada was denied November 13, 1978, without opinion by order attached as Appendix D. Bail has been granted to petitioner for purposes of applying for this writ by order attached as Appendix E.

JURISDICTION

The Supreme Court of the State of Nevada affirmed the judgment of the trial court on June 28, 1978, and denied motion for rehearing on November 13, 1979. The jurisdiction of this court is invoked under 28 U.S.C. 1257(3), 62 Stat. 929.

QUESTIONS PRESENTED

1. Should due process require that a trial court make a statement of reasons supporting the sentence in a felony?

NEVADA STATUTES INVOLVED

NRS 207.190 provides, in pertinent part:

"1. It is unlawful for any person, with intent to compel another to do or abstain from doing an act which such other person has a right to do or abstain from doing, to:

"(a) Use violence or inflict upon such other person or any of his family, or upon his property, or threaten such violence or injury; or

"(b) Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

"(c) Attempt to intimidate such person by threats or force.

"2. Any person who violates the provisions of subsection 1 shall be punished:

"(a) Where physical force or the immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years."

NRS 208.070 provides, in pertinent part:

"An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime; and every person who attempts to commit a crime, unless otherwise prescribed by statute, shall be punished as follows:

***"2. In every other case he shall be punished by imprisonment in such manner as may be prescribed for the commission of the completed offense, for not more than half the longest term, or by a fine of not more than half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both such fine and imprisonment. . ."

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV, states in pertinent part:

". . . nor shall any state deprive any person of life, liberty or property without due process of law . . ."

STATEMENT OF THE CASE

Petitioner plead guilty to an information charging him with attempted coercion. (Nevada Revised Statutes 207.190; 208.070) and was subsequently sentenced to the maximum of three (3) years in the Nevada State Prison. The trial court made no opinion or statement of reasons whatever.

Since petitioner had made a showing that he was nonviolent, that he was only an aider and abetter to the acting participant, and that he was disabled such that prison imposed an unreasonable risk to his physical condition (Appendix F), petitioner moved for reconsideration and asked for a statement of reasons. The motion was denied.

Petitioner appealed to the Nevada Supreme Court and presented the proposition that due process required criteria and a statement of reasons. This was signed again on motion for rehearing.

REASONS FOR GRANTING WRIT

A STATEMENT OF REASONS IS NECESSARY TO THE SENTENCING PROCEDURE IF INDETERMINATE SENTENCING IS TO COMPORT WITH DUE PROCESS.

The Court readily recognizes that the requirement of a statement of reasons as part of the exercise of discretion in indeterminate sentences will be a far reaching decision, but we believe its time has come and that it is necessary as part of the evolving standards of procedural fairness in a civilized society as evidenced by current thought on the subject.

Without question the sentencing process has been the most ignored and neglected phase of the criminal process. Commonwealth v. Riggins, Pa., 377 A.2d 140 (1977); Shepard v. U. S.257 F.2d 293, 294, (6th Civ. 1958); K. Davis, Discretionary Justice 133 (1969); Berger,Reducing Sentencing Disparity: Structured Discretion and the Sentencing Judge, 32 J. Miss. B. 414 (1976). The sentencer has almost totally unlimited, unstructured and unreviewable discretion to impose punishment. As shown by the opinion in this case, that is clearly the situation in Nevada. See also, Lloyd v. State, 94 Nev., Adv. opinion 53, 576 P.2d 740 (1978);

Silles v. State, 92 Nev. 91, 545 P.2d 1159 (1976) and Cook v. State, 77 Nev. 83, 359 P.2d 483 (1961). The depth and breadth of the critical commentary is indicated by the sources cited in Commonwealth v. Riggins, supra.

It has been finally made clear that the sentencing process is subject to the due process clause, Gardner v. Florida, 430 U.S. 349 (1977). The question, as stated in Gardner, is what process is due. Morrissey v. Brewer, 408 U.S. 471 (1972). We submit that in addition to counsel, access to the presentence report and an opportunity for hearing, discretionary sentencing requires a statement of reasons.

It has been recognized that unfettered discretion is a denial of due process and that a statement of reasons is necessary to properly review its exercise, Kent v. United States, 383 U.S. 541 (1966). Judicial discretion is the sound choosing by the court, subject to the guidance of the law, between doing or not doing a thing, the doing of which cannot be demanded as an absolute right of the party who asks that it be done. Chapman v. Dorsey, 230 Minn. 279, 41 N.W.2d 438, 16ALR 2d 1015 (1950). The important thing is that discretion is properly subject to the guidance of the law. A statement of reasons is necessary to establish a body of law for guidance as well as to determine the basis upon which it was exercised in the particular case, Commonwealth v. Riggins, supra.

Gardner v. Florida, supra, recognized the non-static nature of due process and that there are evolving standards of procedural fairness in a civilized society. As pointed out in Commonwealth v. Riggins,supra,

> "Judges, lawyers, scholars and other observers of the criminal justice system, have recognized the problem of unfettered judicial discretion in the sentencing

process, and have almost uniformly called for the requirement that a trial court articulate the reasons for its sentence." 377 A.2d at P.146.

The opinion then cites a lengthy list of authorities unnecessary to recopy here.

We believe that the evolved standards of fairness include this concept and that the Court should give full consideration to this serious question.

Conclusion

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Nevada.

Respectfully,

/s/Patrick R. Doyle

PATRICK R. DOYLE
R. PAUL SORENSON
323 Las Vegas Blvd. South
Las Vegas, Nevada 89101

APPENDIX A

IN THE SUPREME COURT OF
THE STATE OF NEVADA
Filed June 28, 1978
No. 9831

MICHAEL FRANK RENARD,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from judgment and sentence, order denying bail pending appeal, and order denying rehearing and reconsideration of sentence, Eighth Judicial District Court, Clark County; Carl J. Christensen, Judge.

Affirmed.

Patrick R. Doyle, R. Paul Sorenson, and Martin W. Becker, Las Vegas,
for Appellant.

Robert List, Attorney General, Carson City; George E. Holt, District Attorney, and H. Leon Simon, Chief Appellate Deputy, Clark County,
for Respondent.

O P I N I O N

PER CURIAM:

Appellant plead guilty to an amended information charging him with attempted coercion (NRS 207.190; NRS 208.070).[1]

1

NRS 207.190 provides, in pertinent part:

"1. It is unlawful for any person, with intent to compel another to do or abstain from doing an act which such other person has a right to do or abstain from doing, to:

"(a) Use violence or inflict upon such other person or any of his family, or upon his property or threaten such violence or injury; or

"(b) Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

"(c) Attempt to intimidate such person by threats or force.

"2. Any person who violates the provisions of subsection 1 shall be punished:

"(a) Where physical force or the immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years."

NRS 208.070 provides, in pertinent part:

"An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime; and every person who attempts to commit a crime, unless otherwise prescribed by statute, shall be punished as follows:

"1. If the crime attempted is punishable by death or life imprisonment, the person convicted of the attempt shall be punished by imprisonment in the state prison for not more than 20 years.

"2. In every other case he shall be punished by imprisonment in such manner as may be prescribed for the commission of the completed offense, for not more than half the longest term, or by a fine of not more than half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both such fine and imprisonment. . ."

He was subsequently sentenced to three (3) years in the Nevada State Prison and now contends the district court abused its discretion in denying probation and imposing the maximum sentence. We disagree.

The district court is vested with wide discretion regarding sentencing and probation. See Cook v. State, 77 Nev. 83, 359 P.2d 483 (1961). Where, as here, "the sentence is within statutory limits, [citation omitted], this court will refrain from interference with the trial court's imposition of sentence." Lloyd v. State, 94 Nev.____, _____, 576 P.2d 740, 742 (1976). "The fact that the sentence imposed by the court exceeded the sentence recommended by the Department of Parole and Probation is of no consequence." McCullough v. State, 94 Nev. _____, _____, 574 P.2d 585 (1978). Accord, Lloyd v. State, supra.

Other issues raised by appellant are without merit.

Affirmed.

/s/Batjer ,C.J.
Batjer

/s/Mowbray ,J.
Mowbray

/s/Thompson ,J.
Thompson

/s/Gunderson ,J.
Gunderson

/s/Manoukian ,J.
Manoukian

APPENDIX B

IN THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK
Filed June 6, 1977
Case No. 33662

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL FRANK RENARD

Defendant.

JUDGMENT OF CONVICTION

WHEREAS, on the 22nd day of March, 1977, Defendant MICHAEL FRANK RENARD, entered a plea of guilty to the crime of ATTEMPT COERCION, NRS 207.190, the above entitled Court thereafter, on the 31st day of May, 1977, did adjudge the Defendant guilty by reason of his plea of guilty and sentenced Defendant to serve a term of three (3) years in Nevada State Prison. Defendant is to receive credit for time served in the amount of fourteen (14) days.

THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above entitled matter.

DATED this 6th day of June, 1977, in the City of Las Vegas, County of Clark, State of Nevada.

/s/ Carl J. Christensen
DISTRICT JUDGE

APPENDIX C
IN THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK
Filed June 6, 1977
Case No. 33662

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL FRANK RENARD

Defendant.

Order

Having considered the defendant's motion an supporting documents, it is;

HEREBY ORDERED that the Motion to Rehear and Reconsider Sentence with Bail Pending Hearing Thereon, or, in the Alternative to Stay Sentence pursuant to N.R.S. 176.375 is hereby denied.

DATED this 6th day of June, 1977.

/s/ Carl J. Christensen
DISTRICT JUDGE

Prepared by:

/s/ Patrick R. Doyle
PATRICK R. DOYLE
R. PAUL SORENSON
Attorneys for Defendant
323 Las Vegas Blvd. South
Las Vegas, Nevada 89101

APPENDIX D

IN THE SUPREME COURT OF
THE STATE OF NEVADA
Filed June 28, 1978
No. 9831

MICHAEL FRANK RENARD,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER DENYING REHEARING

Rehearing denied.

It is so ORDERED.

/s/Batjer, C. J.
Batjer

/s/Mowbray, J.
Mowbray

/s/Thompson, J.
Thompson

/s/ Gunderson, J.
Gunderson

/s/ Manoukian, J.
Manoukian

APPENDIX E

IN THE EIGHTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK
Filed December 14, 1978
Case No. 33662

THE STATE OF NEVADA

Plaintiff,

vs.

MICHAEL FRANK RENARD,

Defendant

ORDER

Based upon the Motion of the Defendant and the Stipulation of Defendant's counsel and the District Attorney,

IT IS HEREBY ORDERED that bail heretofore entered on behalf of Defendant, MICHAEL FRANK RENARD, for the purpose of appeal shall be continued in order to allow Defendant to make timely application for a Writ of Certioriari from the Supreme Court of the United States. Such bail shall continue until the matter is resolved by the United States Supreme Court, provided that Petition for Certioriari is filed in the Supreme Court of the United States within ninety (90) days of the denial of the rehearing by the Supreme Court of the State of Nevada as provided in Federal Rule 22 of the United States Supreme Court Rules.

DATED this 12th day of December, 1978.

/s/ Carl J. Christensen
DISTRICT JUDGE

Submitted by:

/s/ R. Paul Sorenson
R. Paul Sorenson
Patrick R. Doyle
323 Las Vegas Blvd. South

APPENDIX F

IN THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK
Case No. 33662

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
MICHAEL FRANK RENARD)
)
Defendant.)

EXCERPT FROM REPORTER'S TRANSCRIPT
OF PROCEEDINGS OF SENTENCE HEARING

". . .(JACK JURASKY was called as a witness on behalf of the defendant and after having been duly sworn, testified as follows:)

DIRECT EXAMINATION

MR. DOYLE:

Q. Will you state your name and spell your last name, sir?

A. Jack Jurasky, J-u-r-a-s-k-y, 4055 South Spencer, Las Vegas, Nevada.

Q. What is your occupation?

A. I am a physician and psychiatrist.

Q. Do you practice in the City of Las Vegas?

A. Yes.

Q. Where do you practice?

A. At the same address.

Q. How long have you been in practice, sir?

A. Nine years.

MR. FREEDMAN: Your Honor, the State will stipulate at this juncture to the qualifications of Dr. Jurasky as an expert.

THE COURT: Thank you.

The court will declare Dr. Jurasky is qualified to testify as an expert in the field of psychiatry - as a medical doctor with a specialty in the field of psychiatry, excuse me, Doctor.

MR. DOYLE:

Q. Dr. Jurasky, are you acquainted with the defendant, Michael Frank Renard?

A. Yes, I am.

Q. Have you had an opportunity to examine him?

A. Yes.

Q. And have you furnished a report of that to our office?

A. Yes.

Q. And have you also examined the pre-sentence report?

A. Yes.

Q. And I believe you have had consultations with his orthopaedic surgeon, is that correct?

A. Yes.

Q. And you had other consultations with Mr. Renard?

A. During the interviews that I had with Mr. Renard, I personally administered psychiatric tests, the M and DI and I reviewed my findings and consulted with the team psychologist in our group who concurred with my impressions.

Q. Now, Doctor, from all of this, do you have an opinion concerning Mr. Renard's propensity for violence?

A. Yes.

Q. What is that opinion, sir?

A. I believe that he lacks a propensity for violence.

Q. And do you have any opinion as to whether he would be a suitable candidate to be put on probation and not incarcerated?

A. Yes.

Q. And what is your opinion, Doctor?

A. I would advise and recommend that he not be incarcerated and that he would be a good candidate for probation.

Q. Do you have an opinion as to what the effect of being imprisoned would be on Mr. Renard?

A. Well, I would like to specifically answer that in two categories. One is physical and the other is psychological.

In discussing his physical conditions with Dr. Serfustini, the orthopaedic surgeon who has treated Mr. Renard, and Dr. Serfustini has informed me that he suffers from a rather severe progressive degenerative osteo-arthritis from a traumatic injury that seems very likely to eventually involve a total hip replacement on the right side sometime within twenty years from now depending upon how much stress he has to sustain. I think prison would put a rather heavy burden on his hip, unless he is given a sedentary/job up there, so it is my opinion that unless it is absolutely necessary to serve some purpose or goal that it would create undue hardship on Mr. Renard, physically.

Now, psychologically, it is my impression that he is not criminally bent. I think that hi problems were adolescent in nature and particularly, to him, for a number of reasons, which would be, maybe, beyond the scope of any testimony at this time.

I think that he got in bad company and had trouble getting out of it and that the effect of this total picture of the arrest and the events that happened that night have had a very sobering effect on him and I think that he has, if I can use the phrase, discovered the error of his ways.

I am struck by Mr. Renard's lack of self pity, the poor me variety, why me variety. He seems to me to be straight forward and fully recognizant of what he has done and what he participated in and the consequences have had a sobering effect on him. I think that what was done was immature and juvenile and adolescent and he should get on with his life.

Q. Doctor, I believe that we had a talk in the hall just before we came in here and you made a statement to me about the point where punishment no longer serves its purpose.

Would you repeat that for me, please?

A. Yes.

Punishment is a very interesting thing psychologically as to its effect as a deterrent, which is very limited, and it is for those who feel guilty and it is for some just compensation and it is healing, but beyond a certain point it becomes destructive. It becomes a paradox and creates a feeling of resentment and hostility and at that point revenge and becomes a motivation, I fear, in Mr. Renard because he has reached that amount of punishment that is effective and curative and that beyond that it may not be effective.

Q. Doctor, this crime was committed in complicity with a gentleman by the name of Davis. Knowing what you know of Mr. Renard, do you have an opinion as to whether or not Mr. Renard was afraid of Mr. Davis?

A. Well, I didn't interview Mr. Davis, but from talking about it with Mr. Renard and looking at the reports and the police reports and all of the papers that I examined and all of the conversations that I had, it is my opinion that Mr. Davis was irrational and extremely dangerous and likely to turn not only on Mr. Renard at that time and not only that, he would probably not be stopable.

Mr. Renard was guilty up to this event of mostly odd, or at least peccadillo, getting arrested for being in possession of marijuana in a group of some thirty people who were having a party and being arrested for driving under the influence. At fifteen he was arrested on a grand theft charge.

Now, I don't think that Mr. Renard is the bravest man in the world and when he found himself at the time when he was in the midst of this crime, even though he was in possession of a gun, I think he knew that if he challenged or attempted to stop the accomplishment of this crime, that he knew he was going to have to shoot Mr. Davis because Mr. Davis does not sound like the sort of man that is going to be intimidated by a fellow like Michael, even though he has a gun in his hand.

So, I think Michael finds himself going along with this and because he is afraid and from all of the conversations and all of the reports and statements that I received from the victims, that he was serving to some extent in a protective role.

MR. DOYLE: I have no further questions, Your Honor. . . ."

CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the foregoing Petition for a Writ of Certiorari was served on the following by mailing three copies thereof, first class mail, postage prepaid to:

State of Nevada
ROBERT J. MILLER
District Attorney
200 E. Carson
Las Vegas, Nevada 89101

on the 9th day of February, 1979.

/s/Nancy Inman
Nancy Inman